EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
KEVIN VIENNA
Supervising Deputy Attorney General
ANTHONY DA SILVA, State Bar No. 159330
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2608
Fax: (619) 645-2271
Email: Anthony.DaSilva@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DAVID O'SHELL, Petitioner, **v.** **STEVEN MAYBERG, Warden,** Respondent.	08CV0436 J (NLS) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
KEVIN VIENNA
Supervising Deputy Attorney General
ANTHONY DA SILVA, State Bar No. 159330
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2608
Fax: (619) 645-2271
Email: Anthony.DaSilva@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DAVID O'SHELL, Petitioner, **v.** **STEVEN MAYBERG, Warden,** Respondent.	08CV0436 J (NLS) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner David O'Shell ("O'Shell) is in Respondent's custody on a civil petition, in San Diego County Superior Court Case No. MH 100473, after a jury found he was a sexually violent predator ("SVP") within the meaning of California Welfare and Institution Code sections 6600-6604. (Lodgment 1 - Clerk's Transcript ("CT") at 159.) O'Shell is currently challenging his commitment on appeal in California Court of Appeal, Fourth Appellate District, Division One, Case No. D052192. (Lodgment 11.)

O'Shell filed a First Amended Petition ("Petition") in this Court where he claims that his right to due process and Constitutional rights were violated because: (1) he did not have a probable

cause hearing within ten days as required by California Welfare and Institutions Code section 6601.5 because the SVP petition was filed on November 16, 2006 and he did not appear in court until December 1, 2006 (Pet. at 6 - Ground One); (2) at his appearance on December 1, 2006, he did not consent to waive statutory time and the court set the case for a status conference on January 12, 2007 (Pet. at 7 - Ground Two); (3) at the status conference on January 12, 2007, he did not consent to waive statutory time and the court calendared a probable cause hearing on April 25, 2007, which was changed to April 24, 2007 (Pet. at 8 - Ground Three).

Because O'Shell's challenge to his SVP commitment is ongoing in the California Court of Appeal, this Court should abstain and dismiss the Petition. In addition, O'Shell's claims were raised in state habeas corpus petitions that were denied on the merits by the superior court and state appellate court in reasoned decisions. (Lodgments 4, 6, 8.) O'Shell is not entitled to federal habeas corpus relief because he has failed to meet his burden of showing that the state courts's denial of his claims was contrary to, or an unreasonable application of established United States Supreme Court precedent, or was based upon an unreasonable determination of the facts in light of the evidence presented in the state court, as required by the Antiterrorism and Effective Death Penalty Act of 1996. 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 403, 412-13, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000).

ARGUMENT

I.

THIS COURT SHOULD DISMISS THE PETITION BECAUSE O'SHELL'S CHALLENGE TO HIS SVP COMMITMENT IS CURRENTLY PENDING IN STATE COURT

On June 27, 2008, O'Shell filed a direct appeal challenging his SVP commitment in California Court of Appeal, Fourth Appellate District, Division One, Case No. D052192. (Lodgment 11 at 2.) Federal courts generally may not enjoin ongoing state criminal proceedings. *Younger v. Harris*, 401 U.S. 37, 49-53, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) (*Younger* abstention doctrine); *Hirsh v. Justices of the Supreme Court of the State of California*, 67 F.3d 708, 712 (9th Cir. 1995). This abstention principle has been applied to collateral attacks on state convictions. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 489, 93 S. Ct. 1123, 35 L. Ed. 2d

443 (1973). This rule has also been extended to the civil context. *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992); *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986). Importantly, the abstention doctrine applies where the state action is civil in nature, such as in the case of a Sexual Violent Predator proceeding. *Coleman v. Mayberg*, 2005 WL 1876061, *4, 2005 U.S. Dist. LEXIS 44142, *13 (N.D. Cal. Aug. 8, 2005) ("*Younger* applies to the pending SVPA civil commitment proceedings").

Younger abstention applies if the state proceeding is: (1) currently pending; (2) involves an important state interest; and, (3) affords the petitioner an adequate opportunity to raise constitutional claims. *See Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. at 432. Here, O'Shell's direct appeal is currently pending. (Lodgment 11 at 2.) California has an interest that potentially dangerous sexually violent predators not be released. The direct appeal process affords O'Shell, through counsel, to raise his constitutional claims.

In this case, *Younger* requires dismissal of the petition, and a stay is not a proper option. *See, e.g.*, *Gibson v. Berryhill*, 411 U.S. 564, 577, 93 S. Ct. 1689, 36 L. Ed. 2d 488 (1973) ("*Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts"); *Delta Dental Plan of Calif. Inc. v. Mendoza*, 139 F.3d 1289, 1294 (9th Cir. 1998) ("When a case is one in which the *Younger* doctrine applies, the district court has no discretion, it must dismiss"); *Coleman v. Mayberg*, 2005 WL 1876061, *4, 2005 U.S. Dist. LEXIS 44142, *13 (dismissing petition without prejudice to refiling after SVPA commitment proceedings, including appeal, are completed). Accordingly, O'Shell's Petition must be dismissed

II.

O'SHELL'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY ANY DELAY IN HAS ARRAIGNMENT.

O'Shell claims that his right to due process and Constitutional rights were violated because he was not arraigned within ten days as required by California Welfare and Institutions Code section 6601.5 since the SVP petition was filed on November 16, 2006, and he did not appear

in court until December 1, 2006 (Pet. at 6 - Ground One) The superior court and state appellate court properly denied O'Shell's claim on habeas corpus because he was in custody on his underlying felony conviction prior to the filing of the SVP petition and he failed to show any prejudice or any reason why the claimed delay for the probable cause hearing caused him any detriment or loss of his due process or other Constitutional rights. (Lodgment 4 at 2-3; Lodgment 6.) O'Shell is not entitled to federal habeas corpus relief because he has not met his burden of demonstrating that the decisions by the state courts denying this claim on habeas corpus were neither contrary to, nor an unreasonable application of established United States Supreme Court precedent, and were not based upon an unreasonable determination of the facts in light of the evidence presented in the State courts. 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. at 403, 412-13.

A. California's Sexually Violent Predator Act

California's Sexually Violent Predator's Act ("SVPA"), California Welfare and Institution Code § 6600, et seq., establishes procedures whereby a person previously convicted of a "sexually violent" offense against two or more victims and who has a "diagnosed mental disorder that makes the person a danger to the health and safety of others" may be civilly committed. *See Hydrick v. Hunter*, 500 F.3d 978, 983 (9th Cir. 2007.) On November 7, 2006, California voters passed Proposition 83 (also known as "Jessica's Law"), amending the SVPA effective November 8, 2006. Pursuant to Proposition 83, former California Welfare and Institution Code § 6604 was amended to eliminate a two-year term provision and provided for an indeterminate term of confinement, subject to the SVP's right to petition for release. *People v. Shields*, 155 Cal. App. 4th 559, 562, 65 Cal. Rptr. 3d 922, 924 (2007).

Following the filing of a petition for a determination that an individual is a SVP, the Superior Court must hold a hearing to determine whether there is probable cause to believe that the person is likely to engage in sexually violent predatory criminal behavior upon release from prison. California Welfare and Institution Code § 6602(a); *Hubbart v. Superior Court*, 19 Cal. 4th 1138, 1146-47, 81 Cal. Rptr. 2d 492, 497, 969 P.2d 584 (1999). The probable cause hearing is mandatory (Cal. Welf & Inst. Code § 6602(a)) and must begin within ten calendar days from the detention

order. California Welfare and Institution Code § 6601.5[1/]; *see Cooley v. Superior Court*, 29 Cal. 4th 228, 244-45, 127 Cal. Rptr. 2d 177, 189, 57 P.3d 654 (2002). A probable cause hearing may be continued by a showing of good cause. California Welfare and Institution Code § 6602(b). Notably, "there is no statutory outside time limit within which a probable cause hearing must be held after the filing of the petition: 'Unfortunately, the [SPVA] does not specify a time frame . . . for conducting the probable cause hearing . . . [Citation.].'" *People v. Hayes*, 137 Cal. App. 4th 34, 43, 39 Cal. Rptr. 3d 747, 750 (2006).

If the court finds probable cause, the alleged predator must be detained in a "secure facility" pending a jury trial to determine whether he is a SVP within the meaning of the SVPA. California Welfare and Institution Code § 6602(a); *Hubbart v. Superior Court*, 19 Cal. 4th at 1146-47, 81 Cal. Rptr. 2d at 497. After a trial at which the defendant is determined to be a SVP, the defendant is committed to the custody of the California Department of Mental Health for an indefinite term. California Welfare and Institution Code § 6604; *Hubbart v. Superior Court*, 19 Cal. 4th at 1147, 81 Cal. Rptr. 2d at 498; *Hydrick v. Hunter*, 500 F.3d at 983.

The SVPA is "designed to ensure that the committed person does not 'remain confined any longer than he suffers from a mental abnormality rendering him unable to control his dangerousness.' [Citation.]" *Hubbart v. Superior Court*, 19 Cal. 4th at 1177, 81 Cal. Rptr. 2d at 517. The SVPA provides two ways that a defendant can obtain review of his or her current mental condition to determine if civil confinement is still necessary: (1) section 6608 permits a defendant to petition for conditional release to a community treatment program; and, (2) section 6605 requires

---

1. Welfare and Institutions Code section 6601.5 (Stats. 2000, ch. 41, §2, pp. 102-03, eff. Jun. 26, 2000), reads:

> Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to section 6602. The probable cause hearing proved for in section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

an annual review of the defendant's mental status that may lead to an unconditional release. *People v. Cheek*, 25 Cal. 4th 894, 898, 108 Cal. Rptr. 2d 181, 184; 24 P.3d 1204 (2001); *People v. McKee*, 160 Cal. App. 4th 1517, 1526, 73 Cal. Rptr. 3d 661, 685 (2008).

B. Applicable Federal Law

"'[T]he Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them.'" [Citations.] Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). That liberty interest, however, is not absolute. *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997). Under certain circumstances, States have "provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety." *Hendricks*, 521 U.S. at 356-57.

It is clear that the full panoply of rights afforded to criminal defendants under the Constitution are not applicable to SVPA defendants because the SVPA is civil in nature. *See, e.g.*, *Allen v. Illinois*, 478 U.S. 364, 371-72, 106 S. Ct. 2988, 92 L. Ed. 2d 296 (1986) (Fifth Amendment guarantee against compulsory self-incrimination inapplicable to commitment proceedings under Illinois' Sexually Dangerous Persons Act because commitment proceedings were regulatory and not criminal in nature); *United States v. Perry*, 788 F.2d 100, 118 (3rd Cir. 1986) ("The speedy trial clause deals with the timeliness of criminal prosecutions, not civil commitment proceedings."); *see generally United States v. Burdell*, 187 F.3d 1137, 1141 (9th Cir. 1999) (noting that because a commitment hearing is civil in matter, the constitutional rights to which a defendant in a criminal trial is entitled to do not adhere to a respondent in a commitment hearing). The United States Supreme Court has not specifically applied a Sixth Amendment speedy trial right to claims by detainees awaiting civil commitment hearings pursuant to acts such as California's SVPA. The constitutional right to a speedy trial applies only to criminal prosecutions. The Sixth Amendment states that in "all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . . ." U.S. Const. amend. VI. This right is applicable to the states through the due process clause of the

Fourteenth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213, 221-26, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967); *Barker v. Wingo*, 407 U.S. 514, 515, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

The California Supreme Court has recognized that, "[b]ecause civil commitment involves a significant deprivation of liberty, a defendant in a SVP proceeding is entitled to due process protections." *People v. Otto*, 26 Cal. 4th 200, 209, 109 Cal. Rptr. 2d 327, 334, 26 P.3d 1061 (2001). "It is clear that 'commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.' [Citation.] Therefore, a State must have 'a constitutionally adequate purpose for the confinement.' [Citation.]" *Jones v. United States*, 463 U.S. 354, 361, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983). "The Due Process Clause 'requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.' [Citation.]" *Id.* at 368. Even if an involuntary confinement was initially permissible because it was founded on a constitutionally adequate basis, it cannot constitutionally continue after that basis no longer exists. *O'Connor v. Donaldson*, 422 U.S. 563, 574-75, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975); *Foucha v. Louisiana*, 504 U.S. at 77 (the committed person "may be held as long as he is both mentally ill and dangerous, but no longer").

C. Analysis of O'Shell's Claim

As on state habeas corpus, O'Shell claims that his right to due process was violated because the probable cause hearing did not commence within ten days after the date on which the judge signed the order to produce him in court on November 16, 2006. O'Shell notes in his Petition that his initial appearance in court was on December 1, 2007, which was fifteen days after the SVP petition was filed. (First Amended Petition at 6, Ground One; *see also* Lodgment 4 at 2.)

O'Shell does not cite, and counsel for Respondent is not aware of, any United States Supreme Court precedent holding that applies a Sixth Amendment speedy trial right to claims by detainees awaiting civil commitment hearings pursuant to acts such as California's SVPA. Where the Supreme Court has not addressed an issue in its holding, a state court adjudication on the issue cannot be contrary to, or an unreasonable application of, clearly established federal law. *Kane v. Espitia*, 546 U.S. 9, 9, 126 S. Ct. 407, 163 L. Ed. 2d 10 (2006). Accordingly, he is not entitled to federal habeas corpus relief.

Prior to the passage of Proposition 83 on November 7, 2006, if a defendant's parole was about to expire before a probable cause hearing could be held, the State could request an "urgency review" under California Welfare and Institution Code § 6601.5. The trial court then had to determine whether the SVP petition, on its face, would support a finding of probable cause to believe the defendant was likely to engage in sexually violent predatory criminal behavior upon the defendant's release. If the trial court made a preliminary finding of probable cause, it had to order the defendant detained until a probable cause hearing could be held. In that event, the probable cause hearing had to begin not more than ten days later. *See People v. Badura*, 95 Cal. App. 4th 1218, 1222, 116 Cal. Rptr. 2d 336, 339-340 (2002), citing former California Welfare and Institution Code § 6601.5, Stats. 1998, ch. 19, § 2. After the passage of Proposition 83, that code section is essentially identical, except it allows the State to request such a review in all cases, not just when a defendant's parole is about to expire (requiring an "urgency review"). *People v. Badura*, 95 Cal. App. 4th at 1222-23, 116 Cal. Rptr. 2d at 340. The legislative history of the SVPA explained that, "The purpose behind requiring that a SVP petition be filed while an inmate is in custody is twofold: public protection and ensuring treatment to the dangerous mentally ill . . . ." *Badura*, 95 Cal. App. 4th at 1225, 116 Cal. Rptr. 2d at 342.

As previously discussed, on November 16, 2006, the SVP petition was filed and an order was signed to produce O'Shell for "arraignment" on the petition on December 1, 2006. ((Lodgment 1 - CT at 1-63.) On December 1, 2006, O'Shell appeared with counsel in the San Diego County Superior Court, denied the allegations in the SVP petition, and on his own motion a status conference was set for January 12, 2007. (Petition - Exhibit "C" at 2; Lodgment 1 - CT at 139.)

O'Shell's probable cause hearing did not begin within ten calendar days from date that the superior court judge signed the detention order. But as previously discussed, the SVPA does not specify a time frame for conducting the probable cause hearing. *People v. Hayes*, 137 Cal. App. 4th at 43, 39 Cal. Rptr. 3d at 750. This was not a case where O'Shell was on parole that was about to expire. The SVPA does require a defendant to be in custody, pursuant to a determinate prison term, a parole revocation term, or a 45-day evaluation hold when the initial SVP petition is filed. California Welfare and Institution Code § 6601(a)(2). At the time the SVP petition was filed,

O'Shell was in custody at the California State Prison at Solano serving his 21-year sentence. (Lodgment 1 - CT at 5, 63.) Accordingly, a probable cause hearing within ten days under § 6601.5 was not necessary. *See People v. Badura*, 95 Cal. App. 4th at 1225-26, 116 Cal. Rptr. 2d at 342 (rejecting a defendant's claim that an SVP petition had to be dismissed and he had to be released from custody because his probable cause hearing was held three days after his scheduled released date); *see also People v. Talhelm*, 85 Cal. App. 4th 405, 406-08, 102 Cal. Rptr. 2d 150, 154-55 (2000) (rejecting a defendant's claim that his right to procedural due process was violated because the SVPA proceedings were not completed prior to his scheduled release date). The superior court properly denied O'Shell's petition on this basis as follows:

> As noted, and as verified from the court file in MH 100473, as the time the Petition for Involuntary Treatment was filed, [O'Shell] was incarcerated at the Solano State Prison. Thus, he is, and has been, "detained" at least since 1996 on this particular case.

(Lodgment 4 at 3.)

In *Barker v. Wingo*, the United States Supreme Court specified four factors to be considered in determining whether a defendant's right to a speedy trial under the Sixth Amendment had been violated: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right; and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. at 530. Although the right to a speedy trial applies only to criminal prosecutions, the United States Supreme Court in *United States v. Eight Thousand Eight Hundred and Fifth Dollars ($8,850) in U.S. Currency*, 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143(1983), considered whether the four-factor balancing test developed in *Barker* was the appropriate analysis to use in evaluating claims that a delay in filing civil forfeiture proceedings violated the constitutional guarantee of due process. *Id.* at 556. In that case, the government had delayed 18 months in filing a civil proceeding for forfeiture of the currency seized by U.S. Customs officials as the claimant had passed through airport customs. *Ibid.* After applying the *Barker* factors to the circumstances of that case, the Supreme Court concluded that the post-seizure delay of 18 months, although a "substantial period of time," did not violate due process (*Id.* at 569-70) and implicitly had not "become so prolonged that the dispossessed property owner ha[d] been deprived of a meaningful hearing at a meaningful time." *Id.* at 563. Case law relating to speedy civil commitment trial rights is sparse. But case law

relating to civil commitment trial rights is sparse. The law surrounding speedy trial rights in the criminal trial context may be instructive in analyzing O'Shell's claim. *See Atwood v. Vilsack*, 338 F. Supp. 2d 985, 994 (S.D. Iowa 2004) (applying Sixth Amendment speedy trial right law to analyze denial of a speedy justice claim by pretrial detainees awaiting civil commitment hearings pursuant to Iowa's Sexually Violent Predator Act).

The first *Barker* factor is the length of the delay, which entails a dual inquiry. First, as a threshold matter, only if the delay is "presumptively prejudicial" will a court inquire into the remaining *Barker* factors. *Barker*, 407 U.S. at 530. Second, "if the accused makes this showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." *Doggett v. United States*, 505 U.S. 647, 652, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992). Depending on the nature of the charges, lower courts have generally found post-accusation delay presumptively prejudicial as it approaches one year. *Doggett*, 505 U.S. at 652 n.1; *McNeely v. Blanas*, 336 F.3d 822, 826 (9th Cir. 2003) (three year delay presumptively prejudicial); *United States v. Gregory*, 322 F.3d 1157, 1162 (9th Cir. 2003) (22-month delay between first superseding indictment and trial date was presumptively prejudicial but did not weigh heavily in defendant's favor because it was not excessively long). In *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), the Ninth Circuit concluded that a year-long confinement of a civil detainee who has held in the general criminal population of a county jail pending commitment under California's SVPA created a rebuttable presumption that the confinement was punitive in violate of substantive due process. *Id*. at 934-35.

In denying O'Shell's state habeas petition, the superior court properly concluded that "[O'Shell] has failed to show any prejudice or reason why this delay has caused him any detriment or loss of due process rights." (Lodgment 4 at 3.) O'Shell's complaint that his initial court appearance was five days after the 10 day period upon which the probable cause hearing should have commenced under California Welfare and Institutions Code section 6601.5 (Pet. at 6 - Ground One) does not show any presumptive prejudice under the first *Barker* factor. The slightly over five month delay (159 day) delay between November 16, 2006, when the SVP petition was filed and the superior court judge ordered that O'Shell be produced from state prison to court (Lodgment 1 - CT

at 1-63), and April 24, 2007, when his probable cause hearing was held (Lodgment 1 - CT at 143; Lodgment 3 - RT at 1-107), also does not fall within the one-year period that the United States Supreme Court and the Ninth Circuit have found to be a presumptively prejudicial delay under the first *Barker* factor.

Because the delay claimed by O'Shell is not "presumptively prejudicial," this Court need not inquire into the remaining *Barker* factors. *Barker*, 407 U.S. at 530. But the remaining factors do not assist O'Shell's claim. The second *Barker* factor is reasons for the delay. *Barker v. Wingo*, 407 U.S. at 530. At his initial appearance on December 1, 2006, on O'Shell's own motion a status conference was set for January 12, 2007, because his assigned counsel, Deputy Public Defender Dalen Duong was in trial. (Petition - Exhibit "C" at 2; Lodgment 1 - CT at 139.) On January 12, 2007, O'Shell and his attorney, Deputy Public Defender Dalen Duong, were present in court. The probable cause hearing pursuant to Welfare and Institutions Code § 6602 was set for April 25, 2007. (Lodgment 1 - CT at 140.) On March 29, 2007, by stipulation of counsel the date of the probable cause hearing was changed to April 24, 2007. (Lodgment 1 - CT at 141.) Presumably, these matters were continued to allow O'Shell's counsel to prepare for the probable cause hearing. A probable cause hearing is a full adversarial evidentiary hearing. *People v. Butler*, 68 Cal. App. 4th 421, 432-35, 80 Cal. Rptr. 2d 357, 364-66 (1998); *In re Parker*, 60 Cal. App. 4th 1453, 1466-70, 71 Cal. Rptr. 2d 167, 176-79 (1998). When two psychologists or psychiatrists agree, based on standardized assessment protocol, that a prisoner is a sexually violent predator, the district attorney may file an initial commitment petition. California Welfare and Institution Code § 6601(c),(d),(h),(i); *see also People v. Badura*, 95 Cal. App. 4th at 1222, 116 Cal. Rptr. 2d at 339. In O'Shell's case, assessments by consulting psychologist Jeremy Coles, Ph.D and clinical psychologist Thomas R. MacSpeiden, Ph.D., supported the SVP petition. (Lodgment 1 - CT at 10-60.) Doctors Coles and MacSpeiden were examined by O'Shell's counsel, Dalen Duong, at the probable cause hearing. (Lodgment 3 - RT at 7-58, 73-75, 77-96.)

The third *Barker* factor is defendant's assertion of the speedy trial right. *Barker v. Wingo*, 407 U.S. at 530. The record shows that O'Shell failed to assert any due process violation because of any delay when he initially appeared in court and denied the allegations in the SVP petition on

December 1, 2006. (Petition - Exhibit "C" at 2-3; Lodgment 1 - CT at 139.) In his declaration in support of the instant Petition, O'Shell declares that he did not personally waive, or authorize his counsel to make any time waive, and that the superior court did not ask him to waive, the 10 day period noted in California Welfare and Institution Code § 6601.5. (Petition, Exhibit "C" at 2.) But O'Shell's "failure to assert the right will make it difficult for [him] to prove that he was denied a speedy trial." *Barker v. Wingo*, 407 U.S. at 532.

The fourth *Barker* factor is prejudice. *Barker v. Wingo*, 407 U.S. at 530. Actual prejudice can be shown in three ways: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility that the accused's defense may be impaired. *Doggett v. United States*, 505 U.S. at 654; *Barker v. Wingo*, 407 U.S. at 532. "Of these, the most serious is the last, because the inability [of the accused] adequately to prepare his case skews the fairness of the entire system." *Id.* In denying O'Shell's state habeas corpus petitions, both the superior court and the state appellate court noted that O'Shell had failed to show any prejudice or reason why the claimed delay was detrimental or caused any violation of his due process rights. (Lodgment 4 at 4; Lodgment 6 at 2.) O'Shell does not provide any evidence, including in his own declaration, pointing to any specific damage to his defense stemming from the delay in his probable cause hearing.

Based on the foregoing, the state courts properly concluded that O'Shell was responsible for the delay in his probable cause hearing and that he did not appropriately assert any speedy trial right or due process violation. A review of the four *Barker* factors supports the decisions by the state courts in denying O'Shell's claims on state habeas corpus. The record also shows that the California Legislature's twin concerns were met in this case: (1) that a defendant not be kept in custody beyond the defendant's release date without a showing of good cause; and, (2) that potentially dangerous sexually violent predators not be released. *See People v. Badura*, *supra*, 95 Cal. App. 4th at 1226, 116 Cal. Rptr. 2d at 342. In any event, because the United States Supreme Court has not specifically applied a Sixth Amendment speedy trial right to claims by detainees awaiting civil commitment hearings pursuant to acts such as California's SVPA, the state court's denial of O'Shell's claim cannot be contrary to, or an unreasonable application of, clearly established federal law. *Kane v. Espitia*, 546 U.S. at 9. Accordingly, he is not entitled to federal

habeas corpus relief as to this claim. 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. at 403, 412-13.

III.

O'SHELL'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY CONTINUANCE OF THE PROBABLE CAUSE HEARING

O'Shell contends that his right to due process and Constitutional rights were violated because did not consent to waive the ten day period for a probable cause hearing as required by California Welfare and Institutions Code section 6601.5 either: (1) at his appearance on December 1, 2006 (Pet. at 7 - Ground Two); or, (2) at the status conference on January 12, 2007, where the court calendared a probable cause hearing on April 25, 2007 (Pet. at 8 - Ground Three). O'Shell is not entitled to federal habeas corpus relief because he has not met his burden of demonstrating that the decisions by the state courts denying this claim on habeas corpus were neither contrary to, nor an unreasonable application of established United States Supreme Court precedent, and were not based upon an unreasonable determination of the facts in light of the evidence presented in the State courts. 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. at 403, 412-13.

A. Factual and Procedural Background

On December 1, 2006, at O'Shell appeared in superior court regarding a probable cause hearing under California Welfare and Institution Code § 6602. O'Shell was represented by Deputy Public Defender Jane Kinsey because his assigned attorney, Deputy Public Defender Dalen Duong, was in trial. Attorney Kinsey proposed setting a status conference in January, and the probable cause hearing in April of 2007. (Petition - Exhibit "C" at 2.) The prosecutor, Deputy District Attorney Phyllis Shess, asked that a status conference be set on January 12, 2007, to allow attorney Duong to clear his current trial calender and appear in this matter. (Petition - Exhibit "C" at 2.) The following discussion occurred:

THE COURT: There will be the arraignment now. We'll set it for status on trial and get formal dates.

MS. KINSEY: That's fine.

THE COURT: So go ahead, counsel, and arraign him.

MS. KINSEY: Your honor, Mr. O'Shell is on a [Cal. Welf. & Inst. Code §] 6600 petition. He denies the petition at this time and requests probable cause for a jury trial.

THE COURT: At this point, then, waive any time to have a probable cause hearing within a reasonable time so I can set it for status in January?

MS. KINSEY: Yes.

THE COURT: Note the time waiver. Put the matter over until January.

THE CLERK: Counsel, what date?

MS. KINSEY: January 12th.

THE CLERK: Status set for January 12th at 9:00 o'clock in Department 11.

MS. KINSEY: Thank you.

(Petition - Exhibit "C" at 2-3; Lodgment 1 - CT at 139.)

On January 12, 2007, O'Shell appeared in court for a status conference where he was represented by his counsel, Dalen Duong. The probable cause hearing was set for April 24, 2007. (Lodgment 1 - CT at 140.)

B. State Court Review

O'Shell presented this claim in his state habeas corpus petitions. (*See* Lodgment Nos. 4,5, 7, 9.) The superior court denied this claim, stating that: "In fact, according to the Court's minutes, [O'Shell]] waived statutory time, and it appears that the Status Conference for January 12, 2007, was as a result of [O'Shell]'s own motion." (Lodgment 4 at 3.) The Court of Appeal initially denied this claim as follows:

> O'Shell is improperly attempting to use habeas corpus as a vehicle to bypass a decision by his attorney of record not to file a motion to dismiss. He has not shown that he requested new counsel or attempted to revoke his purported time waivers. O'Shell has not provided copies of the relevant documents (the petition, a request for review under Welf. & Inst. Code, § 6601.5, the November 16, 2006 order, or any minute orders or transcripts). The petition is denied.

(Lodgment 6 at 2.)

The Court of Appeal denied O'Shell's second habeas petition in that court as follows:

> The petition is procedurally barred because it is repetitive, and [O'Shell] has not established an exception to the procedural bar. (*In re Clark* (1993) 5 Cal.4th 750, 765, 767-768.) The petition also fails to state a prima facie case for relief because [O'Shell]

> has not established that his trial counsel's decisions to waive time for and request a continuance of the probable cause hearing fell outside counsel's general authority to control all decisions affecting trial tactics and court proceedings. (See, e.g., *Townsend v. Superior Court* (1975) 15 Cal.3d 774, 781.) The petition is denied.

(Lodgment 8 .)

The California Supreme Court denied the petition containing this claim without comment or citation. (Lodgment 10.)

C. Applicable Law and Analysis

When a defendant chooses to be represented by counsel, the defendant is obligated to follow counsel's exercise of professional judgment and control of the defense. All strategic and tactical decisions other than the decisions to plead guilty, waive a jury and testify are the "exclusive province" of defense counsel and may not be overridden by a defendant without waiver of the right to counsel. *Jones v. Barnes*, 463 U.S. 745, 751, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983); *Waiwright v. Sykes*, 433 U.S. 72, 93, n.1, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977) (Burger, C.J., concurring); *Henry v. Mississippi*, 379 U.S. 443, 85 S. Ct. 564, 13 L. Ed. 2d 408 (1965) (counsel's deliberate choice of strategy is binding on his client); *United States v. Wadsworth*, 830 F.2d 1500, 1509 (9th Cir. 1987) (trial tactics are clearly within realm of powers committed to the discretion of defense counsel); ABA Standards of Criminal Justice: Prosecution and Defense Function, Standard 4-5.2 (3d ed. 1993) (strategic and tactical decisions, such as what motions are to be made, ultimately are to be made by defense counsel, not by the defendant). In *Florida v. Nixon*, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004), the Supreme Court explained that, although an attorney has a duty to consult with a client regarding "important decisions," including questions of overarching defense strategy, citing *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), that obligation does not require the attorney to obtain the defendant's consent to "every tactical decision", citing *Taylor v. Illinois*, 484 U.S. 400, 417-18, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988) (an attorney has authority to manage most aspects of the defense without obtaining his client's approval).

A California SVP probable cause hearing may be continued by a showing of good cause. California Welfare and Institution Code § 6602(b); *see also* Cal. Penal Code § 1050(e)(continuance of criminal matters granted upon showing of good cause); Cal. R. Ct., rule 3.1332 (continuance of

trial on affirmative showing of good cause). The unavailability of a party or trial counsel because of death, illness, or other excusable circumstances may indicate good cause for a continuance. Cal. R. Ct., rule 3.1332(c)(2)&(3). Other factors include whether counsel is engaged in another trial; whether the parties have stipulated to a continuance; and, whether the interests of justice are best served by the continuance. Cal. R. Ct., rule 3.1332(d)(8), (9) & (10). A decision to grant a continuance is within the sound discretion of the trial court. *People v. Johnson*, 26 Cal. 3d 557, 570, 162 Cal. Rptr. 431, 439, 606 P.2d 738 (1980). On the issue of consent, a defendant will be deemed to have consented to a continuance when the defendant has failed to make an affirmative objection to a further delay. *Townsend v. Superior Court*, 15 Cal. 3d 774, 783, 126 Cal. Rptr. 251, 257-58, 543 P.2d 619 (1975).

As previously discussed, O'Shell declares that he did not personally waive, or authorize his counsel to make any time waive, and that the superior court did not ask him to waive, the 10 day period noted in California Welfare and Institution Code § 6601.5. (Petition, Exhibit "C" at 2.) But he failed to make an affirmative objection to any further delay either at his initial appearance on December 1, 2006, where his counsel Deputy Public Defender Jane Kinsey moved for a continuance, or during his second appearance on January 12, 2007, where his counsel, Deputy Public Defender Dalen Duong, requested a continuance (Petition - Exhibit "C" at 2-3; Lodgment 1 - CT at 139, 140), which the California courts properly deemed as him having consented to these continuances. *People v. Johnson*, 26 Cal. 3d at 570, 162 Cal. Rptr. at 439. In denying this claim on habeas corpus, the superior court properly noted that the court minutes reflected that O'Shell had waived statutory time, and the continuance of the status conference was the result of his own motion. (Lodgment 4 at 3.) The state appellate court reasoned that O'Shell had "not shown that he requested new counsel or attempted to revoke his purported time waivers." (Lodgment 6 at 2.)

The record indicates that O'Shell's counsels' decision to move for the continuances was based on tactical decisions. The first one was because his assigned trial counsel was in trial on another matter (Petition - Exhibit "C" at 2; Lodgment 1 - CT at 139), which is good cause for a continuance. Cal. R. Ct., rule 3.1332(c)(3) & (d)(8). The second continuance request presumably was to allow his assigned defense counsel, Dalen Duong, to obtain the appearance and prepare for

the probable cause hearing the examination of Jeremy Coles, Ph.D., and Thomas MacSpeiden, Ph.D., who provided the assessments to allow the prosecutor to file the SVP petition against O'Shell. (Lodgment 1 - CT at 140; Lodgment 3 - RT at 7-58, 73-75, 77-96.) This is also a showing of good cause for the continuance. *See* Cal. R. Ct., rule 3.1332(c)(1) (unavailability of essential lay or expert witness) & (d)(5) (prejudice parties or witnesses will suffer as result of the continuance). It is notable that the State stipulated to both continuance requests (Petition - Exhibit "C" at 2; Lodgment 1 - CT at 139, 140). *See* Cal. R. Ct., rule 3.1332(d)(9).

The Court of Appeal correctly noted that O'Shell's failed to show "that his trial counsel's decisions to waive time for and request a continuance of the probable cause hearing fell outside counsel's general authority to control all decisions affecting trial tactics and court proceedings." (Lodgment 8, citing *Townsend v. Superior Court* 15 Cal. 3d at 781, 126 Cal. Rptr. at 256.) O'Shell's due process or other Constitutional rights were not violated because his counsel were not required to obtain his consent to their tactical decisions to seek a continuance of his probable cause hearing. *Florida v. Nixon*, 543 U.S. at 187; *Taylor v. Illinois*, 484 U.S. at 417-18. Strategic choices, made after consideration of the law and facts relevant to plausible options, are "virtually unchallengeable." *Strickland v. Washington*, 466 U.S. at 690. O'Shell's counsel's decisions to seek continuances were not professionally unreasonable based on the situation that counsel faced at the time. *See Nazarenus v. United States*, 69 F.3d 1391, 1394 (8th Cir. 1995). In any event, counsels' conduct did not prejudice O'Shell's defense at the probable cause hearing or change the result of the proceeding. *Strickland v. Washington*, 466 U.S. at 689-90; *Sassounian v. Roe*, 230 F.3d 1097, 1108 (9th Cir. 2000), quoting *Brecht v. Abrahamson*, 507 U.S. 619, 623, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993) (petitioner only entitled to relief under 28 U.S.C. § 2254 if he shows "substantial and injurious effect or influence in determining the jury's verdict."). That is, "actual prejudice" must be present. *Brecht v. Abrahamson*, 507 U.S. at 637.

The state courts' determination of this issue was not contrary to, or an unreasonable application of, clearly established United States Supreme Court precedent. 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. at 403, 412-13. It is clear from the record that any alleged error did not have a substantial and injurious effect in determining the jury's verdict that O'Shell is a sexually

violent predator. *Brecht v. Abrahamson*, 507 U.S. at 623, 637. Accordingly, O'Shell has failed to meet his burden that he is entitled to federal habeas corpus relief as to this claim.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that O'Shell's Petition for Writ of Habeas Corpus be dismissed, that all further proceedings be terminated, and that this Court deny any request for a certificate of appealability

Dated: July 24, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

KEVIN VIENNA
Supervising Deputy Attorney General

s/Anthony Da Silva
ANTHONY DA SILVA
Deputy Attorney General

Attorneys for Respondent

ADS:jr
80263008.wpd
SD2008801116

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. THIS COURT SHOULD DISMISS THE PETITION BECAUSE O'SHELL'S CHALLENGE TO HIS SVP COMMITMENT IS CURRENTLY PENDING IN STATE COURT	2
II. O'SHELL'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY ANY DELAY IN HAS ARRAIGNMENT	3
A. California's Sexually Violent Predator Act	4
B. Applicable Federal Law	6
C. Analysis of O'Shell's Claim	7
III. O'SHELL'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY CONTINUANCE OF THE PROBABLE CAUSE HEARING	13
A. Factual and Procedural Background	13
B. State Court Review	14
C. Applicable Law and Analysis	15
CONCLUSION	18

TABLE OF AUTHORITIES

Page

Cases

Allen v. Illinois
478 U.S. 364
106 S. Ct. 2988
92 L. Ed. 2d 296 (1986) 6

Ankenbrandt v. Richards
504 U.S. 689
112 S. Ct. 2206
119 L. Ed. 2d 468 (1992) 3

Atwood v. Vilsack
338 F. Supp. 2d 985 (S.D. Iowa 2004) 10

Barker v. Wingo
407 U.S. 514
92 S. Ct. 2182
33 L. Ed. 2d 101 (1972) 7, 9-12

Braden v. 30th Judicial Circuit Court of Kentucky
410 U.S. 484
93 S. Ct. 1123
35 L. Ed. 2d 443 (1973) 2

Brecht v. Abrahamson
507 U.S. 619
113 S. Ct. 1710
123 L. Ed. 2d 353 (1993) 17

Coleman v. Mayberg
2005 WL 1876061, *4
2005 U.S. Dist. LEXIS 44142, *13 (N.D. Cal. Aug. 8, 2005) 3

Cooley v. Superior Court
29 Cal. 4th 228
127 Cal. Rptr. 2d 177
189, 57 P.3d 654 (2002) 5

Delta Dental Plan of Calif. Inc. v. Mendoza
139 F.3d 1289 (9th Cir. 1998) 3

Doggett v. United States
505 U.S. 647
112 S. Ct. 2686
120 L. Ed. 2d 520 (1992) 10, 12

TABLE OF AUTHORITIES (continued)

	Page
Florida v. Nixon 543 U.S. 175 125 S. Ct. 551 160 L. Ed. 2d 565 (2004)	15, 17
Foucha v. Louisiana 504 U.S. 71 112 S. Ct. 1780 118 L. Ed. 2d 437 (1992)	6, 7
Gibson v. Berryhill 411 U.S. 564 93 S. Ct. 1689 36 L. Ed. 2d 488 (1973)	3
Henry v. Mississippi 379 U.S. 443 85 S. Ct. 564 13 L. Ed. 2d 408 (1965)	15
Hirsh v. Justices of the Supreme Court of the State of California 67 F.3d 708 (9th Cir. 1995)	2
Hubbart v. Superior Court 19 Cal. 4th 1138 81 Cal. Rptr. 2d 492 497, 969 P.2d 584 (1999)	4, 5
Hydrick v. Hunter 500 F.3d 978 (9th Cir. 2007)	4, 5
In re Parker 60 Cal. App. 4th 1453 71 Cal. Rptr. 2d 167 (1998)	11
Jones v. Barnes 463 U.S. 745 103 S. Ct. 3308 77 L. Ed. 2d 987 (1983)	15
Jones v. Blanas 393 F.3d 918 (9th Cir. 2004)	10
Jones v. United States 463 U.S. 354 103 S. Ct. 3043 77 L. Ed. 2d 694 (1983)	7
Kane v. Espitia 546 U.S. 9 126 S. Ct. 407 163 L. Ed. 2d 10 (2006)	7, 12

TABLE OF AUTHORITIES (continued)

	Page
Kansas v. Hendricks 521 U.S. 346 117 S. Ct. 2072 138 L. Ed. 2d 501 (1997)	6
McNeely v. Blanas 336 F.3d 822 (9th Cir. 2003)	10
Middlesex County Ethics Comm. v. Garden State Bar Assn. 457 U.S. 423 102 S. Ct. 2515 73 L. Ed. 2d 116 (1982)	3
Nazarenus v. United States 69 F.3d 1391 (8th Cir. 1995)	17
Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc. 477 U.S. 619 106 S. Ct. 2718 91 L. Ed. 2d 512 (1986)	3
O'Connor v. Donaldson 422 U.S. 563 95 S. Ct. 2486 45 L. Ed. 2d 396 (1975)	7
People v. Badura 95 Cal. App. 4th 1218 116 Cal. Rptr. 2d 336 (2002)	8, 11
People v. Butler 68 Cal. App. 4th 421 80 Cal. Rptr. 2d 357 (1998)	11
People v. Cheek 25 Cal. 4th 894 108 Cal. Rptr. 2d 181 24 P.3d 1204 (2001)	6
People v. Hayes 137 Cal. App. 4th 34 39 Cal. Rptr. 3d 747 (2006)	5, 8
People v. Johnson 26 Cal. 3d 557 162 Cal. Rptr. 431 606 P.2d 738 (1980)	16

TABLE OF AUTHORITIES (continued)

	Page
People v. McKee 60 Cal. App. 4th 1517 73 Cal. Rptr. 3d 661 (2008)	6
People v. Otto 26 Cal. 4th 200 109 Cal. Rptr. 2d 327 26 P.3d 1061 (2001)	7
People v. Shields 155 Cal. App. 4th 559 65 Cal. Rptr. 3d 922 (2007)	4
People v. Talhelm 85 Cal. App. 4th 405 102 Cal. Rptr. 2d 150 (2000)	9
Sassounian v. Roe 230 F.3d 1097 (9th Cir. 2000)	17
Strickland v. Washington 466 U.S. 668 104 S. Ct. 2052 80 L. Ed. 2d 674 (1984)	15, 17
Taylor v. Illinois 484 U.S. 400 108 S. Ct. 646 98 L. Ed. 2d 798 (1988)	15, 17
Townsend v. Superior Court 15 Cal. 3d 774 126 Cal. Rptr. 251 543 P.2d 619 (1975)	16, 17
United States v. Burdell 187 F.3d 1137 (9th Cir. 1999)	6
United States v. Eight Thousand Eight Hundred and Fifth Dollars ($8,850) in U.S. Currency 461 U.S. 555 103 S. Ct. 2005 76 L. Ed. 2d 143 (1983)	9
United States v. Gregory 322 F.3d 1157 (9th Cir. 2003)	10
United States v. Perry 788 F.2d 100 (3rd Cir. 1986)	6
United States v. Wadsworth 830 F.2d 1500 (9th Cir. 1987)	15

TABLE OF AUTHORITIES (continued)

	Page
Waiwright v. Sykes 433 U.S. 72 97 S. Ct. 2497 53 L. Ed. 2d 594 (1977)	15
Williams v. Taylor 529 U.S. 362 120 S. Ct. 1495 146 L. Ed. 2d 389 (2000)	2, 4, 13
Younger v. Harris 401 U.S. 37 91 S. Ct. 746 27 L. Ed. 2d 669 (1971)	2
Constitutional Provisions	
United States Constitution	
Fifth Amendment	6
Sixth Amendment	6, 7
Fourteenth Amendment	7
Statutes	
Antiterrorism and Effective Death Penalty Act ("AEDPA") Pub. L. No. 104-132, 110 Stat. 1214 (1996)	2
California Penal Code § 1050(e)	15
California Welfare and Institution Code §§ 6600-6604	1
§ 6600	4
§ 6601(a)(2)	8
§ 6601(c),(d),(h),(i)	11
§ 6601.5	2, 3, 5, 8, 10, 12, 13, 16
§ 6602	11, 13
§ 6602(a)	4, 5
§ 6602(b)	5, 15
§ 6604	4, 5
§ 6605	5
§ 6608	5
Stats. 1998 ch. 19, § 2	8
Stats. 2000 ch. 41, § 2, pp. 102-03	5

TABLE OF AUTHORITIES (continued)

	Page
Title 28 United States Code	
§ 2254	17
§ 2254(d)	2, 4, 13, 17
Court Rules	
California Rules of Court	
rule 3.1332	15
rule 3.1332(c)(1)	17
rule 3.1332(c)(2)&(3)	16
rule 3.1332(c)(3) & (d)(8)	16
rule 3.1332(d)(8), (9) & (10)	16
rule 3.1332(d)(9)	17
Other Authorities	
ABA Standards of Criminal Justice: Prosecution and Defense Function Standard 4-5.2 (3d ed. 1993)	15
California's Sexually Violent Predator's Act ("SVPA")	4